



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,688	12/19/2005	Michael Sasha John	1436/68977-PCT-US	6768

23432 7590 10/04/2010  
COOPER & DUNHAM, LLP  
30 Rockefeller Plaza  
20th Floor  
NEW YORK, NY 10112

EXAMINER
----------

EISEMAN, ADAM JARED

ART UNIT	PAPER NUMBER
----------	--------------

3736

MAIL DATE	DELIVERY MODE
-----------	---------------

10/04/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/538,688	<b>Applicant(s)</b> JOHN, MICHAEL SASHA	
	<b>Examiner</b> ADAM J. EISEMAN	<b>Art Unit</b> 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11, 20, 21 and 40-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 20, 21 and 40-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This action is responsive to applicant's amendments and arguments/remarks filed on 7/21/2010.

#### ***Claim Objections***

2. The previously held claim objections are withdrawn in view of the amendments.

#### ***Double Patenting***

3. The double patenting rejection is withdrawn in view of the amendments which change the claim language and limitations to differ from the copending application.

#### ***Claim Rejections - 35 USC § 101***

4. The previously held 101 rejections are withdrawn in view of the amendments which address the previously non-statutory subject matter.

#### ***Claim Rejections - 35 USC § 112***

5. The previously held 112 rejections are withdrawn in view of the amendments which removes the means for language that invokes 112 paragraph 6.

#### ***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 1-11 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by John et al (US 2001/0049480).

Since the priority documents do not disclose the claimed subject matter, these claims are not being afforded the priority dates of the provisional applications. Therefore the priority date of these claims is the filing date of the application.

Regarding claims 1-11, 20-21 and 39; the methods as claimed are disclosed in paragraphs [0136]-[0137], [0143], [0150], [0154]-[0157], [0193], [0301] and [0332]. A rapid hearing test is disclosed in paragraph [0301]. It is inherent that the test results from the hearing test in paragraph [0137] would yield a pass/fail result as the audiologist administering the test would determine from the results that a person has passed or failed.

Regarding claim 20; the method as claimed is disclosed in paragraphs [0136]-[0137] and [0301]-[0302].

Regarding claim 21; the method as claimed is disclosed in paragraph [0136]-[0143].

8. Claims 1-3, 7, 9, 20-21 and 40-43 are rejected under 35 U.S.C. 102(b) as being anticipated by MASTER (examiner included NPL by John et al).

Regarding claims 3, 7, 9, 20-24 and 40-43; MASTER discloses the use of the MASTER system to provide a modulated stimulus, record responses, analyze acquired signals and evaluate the result data to determine the presence of an auditory response. One of ordinary skill would have been able to recognize that the recognition of the presence or lack of a response inherently provides a pass/fail result (see whole document).

9. Claims 1-3, 7, 9, 20-21 and 40-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Master: Stimulus and Recording Parameters (examiner included NPL; herein referred to as MASTER: Stimulus).

MASTER: Stimulus discloses the use of MASTER to provide a modulated stimulus, record responses, analyze the acquired signals and evaluate the result data to determine the presence of an auditory response. One of ordinary skill would have been able to recognize that the recognition of the presence or lack of a response inherently provides a pass/fail result (see whole document).

### ***Response to Arguments***

8. Applicant's arguments filed 7/21/2010 have been fully considered but they are not persuasive. Specifically the applicant argues that John does not disclose a 'screening test' as they define a screening test in their arguments. The examiner respectfully disagrees. The current claims as well as the specification has not defined what a screening test is in relation to a normal hearing test. The pass/fail result is disclosed in paragraph [0137], wherein the display of the test results would inherently disclose a "pass/fail" result that can be determined by the operator.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 3736

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ADAM J. EISEMAN whose telephone number is (571)270-3818. The examiner can normally be reached on Monday-Friday 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AE

Application/Control Number: 10/538,688

Page 6

Art Unit: 3736

9/30/2010

/A. J. E./

Examiner, Art Unit 3736

/Max Hindenburg/

Supervisory Patent Examiner, Art Unit 3736